

Products that qualify as medicines, drugs, or medical appliances are taxed at the reduced low rate of 1% plus applicable local taxes. See 86 Ill. Adm. Code 130.310. (This is a GIL).

March 3, 2003

Dear Xxxxx:

This letter is in response to your letter dated December 30, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

We are a multi-level marketing company that, by agency agreement, will be collecting sales tax and filing sales tax returns with the State of Illinois. We will be collecting sales tax from our distributors based on the suggested retail value of our products and remitting that tax to the state.

We have been able to determine the tax category of all our products except for a combination package called **ABC**. This product contains both food and general merchandise items.

We have enclosed for your review, a listing of all the products contained in the **ABC** (See Attachment A). As you can see, by using the cost per item approach, approximately 74% of this combo is made up of food or vitamin products. There is no special packaging used in the **ABC**, it is simply a regular cardboard box.

In view of the above said facts, please advise how we should treat this package:

- 1) As a food item, subject to sales tax at the rate applicable to food.
- 2) As a general merchandise, subject to sales tax at the rate applicable to general merchandise.
- 3) As a combination of both food and general merchandise: 70% subject to the food rate and 30% subject to the general merchandise rate.

We respectfully request that you review this issue and provide us with a written response.

Thank you and please call me with any questions.

DEPARTMENT'S RESPONSE:

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax unless an exemption is specifically provided. Food, drugs, medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1% plus any applicable local taxes. See the enclosed copy of 86 Ill. Adm. Code 130.310.

As you can see at Section 130.310(b)(1), "[a] food is any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice." A medicine or drug is "any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities." See Section 130.310(c)(1). Under the above stated definitions, dietary supplements could be classified as food or they could be classified as drugs if the products purport on the label to have medicinal qualities.

Products that do not meet the appropriate definitions of food, drugs, medicines and medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes. Soft drinks are always taxed at the high rate. "Soft drinks" does not include coffee, tea, non-carbonated water, infant formula, milk or milk products, or drinks containing 50% or more natural fruit or vegetable juice.

The manner in which food is taxed depends upon the nature of the establishment that is selling the food. Retailers who provide seating or facilities for on-premises consumption of food generally incur tax at the high rate on all food sales (including bulk or grocery type items). However, if establishments sell both food that has been prepared for immediate consumption and bulk or grocery type items and also provide facilities for on-premises consumption, the lower rate of tax may be charged on the bulk or grocery type items only if the dining facilities are physically partitioned from the area where food not for immediate consumption is sold and these facilities utilize a separate means of collection of receipts. See 86 Ill. Adm. Code 130.310(b)(3).

If establishments have no seating or facilities for on-premises consumption of food, the tax rate incurred on food sales is determined by whether the majority (over 50%) are bulk or grocery type sales or are sales for immediate consumption. If more than 50% of all food sales are for immediate consumption, the retailer must charge the high rate on all food sales. If more than 50% of all food sales are bulk or grocery type items, all food sales are taxed at the low rate with the exception of hot foods, food that has been prepared for immediate consumption, alcoholic beverages, and soft drinks. See Section 130.310(a). Food for immediate consumption is defined in the regulation as hot food and food made ready by the retailer to be eaten without substantial delay after the final stage of preparation by the retailer.

As stated above, medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1% plus applicable local taxes. Items subject to this lower tax rate include prescription and nonprescription medicines, drugs, medical appliances, and insulin, urine testing utensils, syringes, and needles used by diabetics, for human use. A medicine or drug is defined as any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities.

The products you have described in the attachment to your letter appear to fall within the food and drug category along with general merchandise. Based upon the limited descriptions in your attachment, we cannot confirm which of these items would qualify for the low rate of tax. If you are selling all of these types of items in one package for a single price, the Department generally uses a primary test to determine at what tax rate you would incur on the sale of that package. If more than 50% of the value of a set, package or gift basket of items sold together is derived from food products eligible for the reduced rate of tax, then the set, package or gift basket is normally taxed at the reduced rate.

If this is the case and if over 50% of the value of the combination package is from the food or drug products contained within them, the packages generally would be considered to be primarily food and drugs and will be taxable at the low (1%) rate of tax plus local taxes. If, however, over 50% of the value of the package is derived from non-food or high-rate items, then the package is generally taxable at the high (6.25%) rate plus local taxes established for general merchandise.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.